IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.68 of 1989
Date of decision:24.10.2006

The Commissioner of Income Tax, Patiala

....Petitioner

versus

M/s. S.S.Woollen Mills, Ludhiana

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the revenue.

JUDGMENT:

This reference has been made at the instance of the revenue by the Income Tax Appellate Tribunal, Chandigarh, arising out of its order dated 8.2.1986 in ITA No.76 of 1986 for the assessment year 1976-77. The question referred is as under:-

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law that the amount of penalty levied under section 36(3) of the Bombay Sales Tax Act, 1959 was nothing but interest for depriving the Govt. of its legitimate dues and was admissible as a deduction under the Income Tax Act, 1961?"

The question referred has been gone into by the Hon'ble Supreme Court in **Parkash Cotton Mills P. Limited v. CIT,** (1993) 201 ITR 684, wherein the question was deduction claimed on account of interest paid for delayed payment of sales tax and ESI contribution. It was observed that where the amount paid is in the nature of compensation, the same will be allowable irrespective of the nomenclature used. Relevant observations are:-

> "...Therefore, whenever any statutory impost paid by an assessee by way of damages or penalty or interest is

> claimed as an allowable expenditure under section 37(1) of the Income Tax Act, the assessing authority is required to examine the scheme of the provisions of the relevant statute providing for payment of such impost notwithstanding the nomenclature of the impost as given by the statute, to find whether it is compensatory or penal in nature. The authority has to allow deduction under section 37(1) of the Income Tax Act, wherever such examination reveals the concerned impost to be purely compensatory in nature. Wherever such impost is found to be of a composite nature, that is, partly of compensatory nature and partly of penal nature, the authorities are obligated to bifurcate the two components of the impost and give deduction to that component which is compensatory in nature and refuse to give deduction to that component which is penal in nature."

In the present case, the Tribunal has held that the penalty was in the nature of interest as was the position under section 36(3) of the Bombay Sales Tax Act, 1959, which was the issue involved before the Tribunal in (1985) 21 TTJ(Bom) 536, which was the judgment followed in the present case. Learned counsel for the revenue has not been able to show that deduction for penalty which was allowed, was not in the nature of interest.

Though, 17 years have passed, paper book has not been filed. Learned counsel for the revenue is unable to render any assistance to the court.

In view of the above, even though, the question is liable to be answered against the revenue on merits, we return the reference unanswered.

(Adarsh Kumar Goel)
Judge

October 24, 2006
'gs'

(Rajesh Bindal)
Judge